

**Exhibit F to Joint Pretrial Memorandum**  
**(Issues of Facts, Which Remain to Be Litigated)**

The parties agree that the following issues of fact are to be tried.

1. For purposes of the preference claim under 11 U.S.C. § 547(b):
  - a. Whether the Plaintiff conducted reasonable due diligence in the circumstances of the case and taking into account the Defendant's known or reasonably knowable affirmative defenses under subsection (c) prior to bringing the adversary proceeding?
  - b. Whether the Debtor was insolvent at the time of the Transfers?
  - c. Whether the Transfers enabled Defendant to receive more than Defendant would have received if—
    - (A) the case were a case under chapter 7 of this title;
    - (B) the Transfers had not been made?
2. For the purposes of an "ordinary course" defense under 11 U.S.C. § 547(c)(2)(A)
  - a. Were the Transfers made in the ordinary course of business or financial affairs of the Debtors and Defendant?
3. For purposes of a "subsequent new value defense" under 11 U.S.C. § 547(c)(4):
  - a. When did Defendant provide the alleged "new value" to the Debtors?
  - b. What was the amount of "new value" that Defendant provided the Debtors?
4. For purposes of Defendant's reclamation demand under 11 U.S.C. § 546(c):
  - a. When did Defendant deliver the goods that Defendant seeks to reclaim?
  - b. What was the value of the goods that were subject to the reclamation demand?
  - c. Whether the Debtors were in possession of any of the goods – and if so, to what extent – when the reclamation demand was made?
  - d. What efforts did Defendant make to obtain the goods that it sought to reclaim?

5. To the extent the parties cannot agree, what were the pre-petition purchase orders that were cancelled?

6. What was the post-petition Debtors' role in agreeing to the post-petition terms?

7. Without a supply agreement, was the Defendant under any obligation to grant pre-petition terms to the post-petition debtors for custom products?

8. For the purposes of the post-petition transfer claim under 11 U.S.C. § 549, were such transfers not authorized under Title 11 of the United States Code or by the Court?

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